

# SENATE BILL No. 399

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-7-2-178.8; IC 12-24-2-8; IC 16-18-2; IC 16-41.

**Synopsis:** Smoking ban in public places. Prohibits smoking in public places and places of employment. Provides exceptions to the smoking prohibitions. Allows a person who owns or controls an establishment, facility, or outdoor area that does not qualify as a public place or place of employment to declare the area a nonsmoking place. Requires the posting of "no smoking" signs in and the removal of ashtrays from a public place or place of employment. Prohibits firing or refusing to hire a person for reporting a violation or exercising an obligation under the smoking ban law. Prohibits smoking on school buses. Requires the department of health (department) or the department's designee to enforce the smoking prohibitions. Requires the department to establish a schedule of civil penalties. Establishes the public smoking enforcement fund. Provides procedures for administering civil penalties for violations. Establishes duties for the department. Provides procedures for administering civil penalties for violations. Allows local governments to adopt more restrictive anti-smoking ordinances. Repeals the current clean indoor air law and related definitions. Makes conforming changes.

**Effective:** July 1, 2009.

**Dillon**

January 12, 2009, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 399

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 12-7-2-178.8 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 178.8. "Smoking", for  
3 purposes of IC 12-24-2-8, has the meaning set forth in ~~IC 16-41-37-3~~.  
4 **IC 16-41-37.1-11.**

5 SECTION 2. IC 12-24-2-8 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Notwithstanding  
7 IC 12-27-3-3, the superintendent of a state institution has complete  
8 authority to regulate smoking (as defined in ~~IC 16-41-37-3~~)  
9 **IC 16-41-37.1-11**) within the state institution.

10 (b) A physician licensed under IC 25-22.5 may prescribe nicotine  
11 as is medically necessary for a resident of a state institution.

12 SECTION 3. IC 16-18-2-10, AS AMENDED BY P.L.101-2007,  
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2009]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has  
15 the meaning set forth in IC 16-23.5-1-2.

16 (b) "Agency", for purposes of IC 16-40-5, has the meaning set forth  
17 in IC 16-40-5-1.



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(c) "Agency", for purposes of ~~IC 16-41-37~~, **IC 16-41-37.1**, has the meaning set forth in ~~IC 16-41-37-1~~. **IC 16-41-37.1-2.**

SECTION 4. IC 16-18-2-113.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 113.5. "Employee", for purposes of IC 16-41-37.1, has the meaning set forth in IC 16-41-37.1-3.**

SECTION 5. IC 16-18-2-114 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 114. "Employer" means the following:

(1) For purposes of IC 16-41-11, has the meaning set forth in IC 16-41-11-1.

(2) For purposes of **IC 16-41-37.1**, has the meaning set forth in **IC 16-41-37.1-4.**

SECTION 6. IC 16-18-2-114.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 114.5. "Enclosed area", for purposes of IC 16-41-37.1, has the meaning set forth in IC 16-41-37.1-5.**

SECTION 7. IC 16-18-2-264.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 264.6. "Outdoor patio", for purposes of IC 16-41-37.1, has the meaning set forth in IC 16-41-37.1-6.**

SECTION 8. IC 16-18-2-284.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 284.1. "Place of employment", for purposes of IC 16-41-37.1, has the meaning set forth in IC 16-41-37.1-7.**

SECTION 9. IC 16-18-2-294.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 294.7. "Proprietor", for purposes of IC 16-41-37.1, has the meaning set forth in IC 16-41-37.1-8.**

SECTION 10. IC 16-18-2-295, AS AMENDED BY P.L.41-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 295. (a) "Provider", for purposes of IC 16-21-8, has the meaning set forth in IC 16-21-8-0.5.

(b) "Provider", for purposes of IC 16-38-5, IC 16-39 (except for IC 16-39-7) and IC 16-41-1 through IC 16-41-9, ~~and IC 16-41-37~~, means any of the following:

(1) An individual (other than an individual who is an employee or a contractor of a hospital, a facility, or an agency described in subdivision (2) or (3)) who is licensed, registered, or certified as

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a health care professional, including the following:

- (A) A physician.
  - (B) A psychotherapist.
  - (C) A dentist.
  - (D) A registered nurse.
  - (E) A licensed practical nurse.
  - (F) An optometrist.
  - (G) A podiatrist.
  - (H) A chiropractor.
  - (I) A physical therapist.
  - (J) A psychologist.
  - (K) An audiologist.
  - (L) A speech-language pathologist.
  - (M) A dietitian.
  - (N) An occupational therapist.
  - (O) A respiratory therapist.
  - (P) A pharmacist.
  - (Q) A sexual assault nurse examiner.
- (2) A hospital or facility licensed under IC 16-21-2 or IC 12-25 or described in IC 12-24-1 or IC 12-29.
- (3) A health facility licensed under IC 16-28-2.
- (4) A home health agency licensed under IC 16-27-1.
- (5) An employer of a certified emergency medical technician, a certified emergency medical technician-basic advanced, a certified emergency medical technician-intermediate, or a certified paramedic.
- (6) The state department or a local health department or an employee, agent, designee, or contractor of the state department or local health department.
- (c) "Provider", for purposes of IC 16-39-7-1, has the meaning set forth in IC 16-39-7-1(a).

SECTION 11. IC 16-18-2-298 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 298. "Public ~~building~~, **place**", for purposes of ~~IC 16-41-37~~, **IC 16-41-37.1**, has the meaning set forth in ~~IC 16-41-37-2~~. **IC 16-41-37.1-9.**

SECTION 12. IC 16-18-2-318.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 318.1. "Retail ~~area~~, **tobacco establishment**", for purposes of ~~IC 16-41-37~~, **IC 16-41-37.1**, has the meaning set forth in ~~IC 16-41-37-3.1~~. **IC 16-41-37.1-10.**

SECTION 13. IC 16-18-2-332 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 332. "Smoking", for purposes of ~~IC 16-41-37~~, **IC 16-41-37.1**, has the meaning set forth in

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~~IC 16-41-37-3~~. **IC 16-41-37.1-11.**

SECTION 14. IC 16-41-37.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 37.1. Restrictions on Public Smoking**

**Sec. 1. Except as provided in section 13 of this chapter, this chapter does not apply to the following:**

**(1) Private residences, except during the hours of operation as:**

**(A) a child care home licensed under IC 12-17.2-5 or an adult care home; or**

**(B) a business:**

**(i) by a person other than a person residing in the private residence; or**

**(ii) when employees of the business who are not residents of the private residence or are not related to the owner are present.**

**(2) Rooms for sleeping in hotels, motels, and other lodging facilities designated as smoking rooms. However, not more than twenty percent (20%) of the sleeping rooms in a hotel, motel, or other lodging facility may be designated as smoking rooms.**

**(3) Family owned and operated places of employment in which all employees are related to the owner, but only if:**

**(A) the enclosed areas of the place of employment are not open to the public and are in a freestanding structure occupied solely by the place of employment; and**

**(B) smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited under this chapter.**

**(4) A health facility licensed under IC 16-28, but only to the extent allowed by the health facility and subject to the following:**

**(A) If an indoor smoking area is provided for residents of the health facility, the designated indoor smoking area must be separately enclosed and separately ventilated so that smoke does not enter any areas where smoking is prohibited under this chapter.**

**(B) Only residents of the health facility may use the designated indoor smoking area for smoking.**

**(C) A health facility may designate specific times when the indoor smoking area may be used.**

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(D) An employee of a health facility is not required to accompany a resident into a designated indoor smoking area or perform services in the area while the area is being used for smoking.

(5) A retail tobacco establishment, subject to the following:

(A) To be exempt from this chapter, except as provided in section 13 of this chapter, a retail tobacco establishment in operation before July 1, 2009, must annually file with the state department by January 31 an affidavit stating the percentage of the establishment's gross income of the prior calendar year that was derived from the sale of cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related smoking accessories.

(B) To be exempt from this chapter, except as provided in section 13 of this chapter, a retail tobacco establishment that begins operation after June 30, 2009, or an existing retail tobacco establishment that relocates to another location after June 30, 2009, must be located in a freestanding structure occupied solely by the business, and smoke from the business must not migrate into an enclosed area where smoking is prohibited under this chapter.

(6) An outdoor patio that is physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings must be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio is considered an extension of the enclosed area and subject to this chapter.

(7) A club if:

(A) the club meets the requirements:

(i) set forth in IC 7.1-3-20-1 for a club; or

(ii) set forth in IC 7.1-3-20-7 for a fraternal club;

(B) the club is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code;

(C) the club does not have employees;

(D) the club is located in a freestanding structure occupied solely by the club;

(E) individuals who are not members of the club are not present in the club's building;

(F) individuals who are less than eighteen (18) years of age are not present in the club's building;

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(G) smoke from the club does not migrate into an enclosed area where smoking is prohibited under this chapter; and  
 (H) the club holds a retailer's permit issued under IC 7.1 if alcohol is served in the club.

Sec. 2. As used in this chapter, "agency" means a board, a commission, a department, an agency, an authority, or another entity exercising a part of the executive, administrative, legislative, or judicial power of the state or local government.

Sec. 3. As used in this chapter, "employee" means a person who:

- (1) is employed by an employer;
- (2) contracts with an employer or another person to perform services for an employer; or
- (3) performs services for an employer with or without compensation.

Sec. 4. As used in this chapter, "employer" means an agency, an individual, a business, an association, or another public or private entity, including a nonprofit entity, that:

- (1) employs or contracts for; or
- (2) accepts;

services provided from an employee.

Sec. 5. As used in this chapter, "enclosed area" means an area with:

- (1) a roof or overhead covering of any kind; and
- (2) walls or side coverings of any kind, regardless of the presence of entrances and exits, on all sides or on all sides but one (1).

Sec. 6. As used in this chapter, "outdoor patio" means an area that:

- (1) is enclosed by a roof or overhead covering and walls or side coverings on not more than two (2) sides; or
- (2) does not have a roof or other overhead covering.

Sec. 7. (a) As used in this chapter, "place of employment" means an enclosed area that is under the direct or indirect control of an employer and that is used by the employer's employees for work or any other purpose, including offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles.

(b) An enclosed area described in this section is a place of employment without regard to the time of day or the presence of employees.

Sec. 8. As used in this chapter, "proprietor" means an employer, an owner, a manager, an operator, a retail permit holder, or a

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1 person in charge or control of a public place or place of  
2 employment.

3 Sec. 9. As used in this chapter, "public place" means an enclosed  
4 area where the public is invited or permitted.

5 Sec. 10. (a) As used in this chapter, "retail tobacco  
6 establishment" means a retail establishment that:

7 (1) does not allow an individual who is less than eighteen (18)  
8 years of age to enter the retail establishment; and

9 (2) derives more than eighty percent (80%) of its gross  
10 revenue from the sale of cigars, cigarettes, pipes, or other  
11 smoking devices for burning tobacco and related smoking  
12 accessories and in which the sale of other products is merely  
13 incidental.

14 (b) The term does not include a tobacco department or section  
15 of a larger commercial establishment, including an establishment  
16 with a liquor permit or a restaurant.

17 Sec. 11. As used in this chapter, "smoking" means inhaling,  
18 exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or  
19 other lighted smoking equipment.

20 Sec. 12. (a) A proprietor of a public place or place of  
21 employment may not permit smoking in the:

22 (1) public place or place of employment; or

23 (2) areas directly or indirectly under the control of the  
24 proprietor immediately adjacent to entrances and exits to the  
25 public place or place of employment.

26 (b) A proprietor of a public place or place of employment shall  
27 ensure that smoke does not enter an area in which smoking is  
28 prohibited under this chapter, including entry through entrances,  
29 windows, and ventilation systems.

30 (c) A person shall immediately discontinue smoking in a public  
31 place, a place of employment, or an establishment, facility, or  
32 outdoor area declared to be a nonsmoking place under section 13  
33 of this chapter when requested to do so by the proprietor or an  
34 employee of the public place, place of employment, establishment,  
35 facility, or outdoor area.

36 Sec. 13. (a) The owner, manager, operator, or other person in  
37 charge or control of an establishment, facility, or outdoor area that  
38 does not qualify as a public place or place of employment may  
39 declare the establishment, facility, or outdoor area as a  
40 nonsmoking place.

41 (b) Smoking is prohibited in any place declared to be a  
42 nonsmoking place under this section if a sign conforming to the

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requirements of section 14 of this chapter is posted in the place.

**Sec. 14. The proprietor of a public place or place of employment shall do the following:**

**(1) Post signs that:**

**(A) state "No Smoking" or display the international no smoking symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it;**

**(B) are conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, including at each entrance to the public place or place of employment;**

**(C) are of sufficient size to be clearly legible to a person of normal vision throughout the areas that the signs are intended to mark; and**

**(D) contain a telephone number for the reporting of violations.**

**(2) Remove all ashtrays and other receptacles used for disposing of smoking materials from an area where smoking is prohibited by this chapter.**

**Sec. 15. A person, a proprietor, or an employer may not discharge, refuse to hire, or in any manner retaliate against an individual for reporting a violation or exercising any right or obligation under this chapter.**

**Sec. 16. (a) As used in this section, "school bus" means a motor vehicle that is:**

**(1) designed and constructed to accommodate at least ten (10) passengers;**

**(2) owned or operated by a public or governmental agency, or privately owned and operated for compensation; and**

**(3) used for the transportation of school children to and from the following:**

**(A) School.**

**(B) School athletic games or contests.**

**(C) Other school functions.**

**(b) As used in this section, "school week" means a normal Monday through Friday week that contains three (3) or more days that each contain more than four (4) hours of classroom instruction.**

**(c) A person may not smoke in a school bus during a school week or while the school bus is being used for a purpose described in subsection (a)(3).**

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(d) A school bus may not be used to transport an individual who is less than eighteen (18) years of age if smoking has been allowed on the bus during the previous twenty-four (24) hours, unless the school bus has been vented according to procedures adopted by the state department.

Sec. 17. (a) The state department and the state department's designees shall enforce this chapter.

(b) The state department shall do the following:

(1) Adopt rules under IC 4-22-2 to implement and enforce this chapter.

(2) Adopt rules under IC 4-22-2 to establish a schedule of civil penalties for violations of this chapter. The schedule must meet the following requirements:

(A) The penalty schedule must be designed to encourage compliance with this chapter.

(B) The civil penalty for a violation of section 12(a) or 12(b) of this chapter may not be less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500).

(C) The amount of a penalty for a violation of section 12(c) may not exceed one hundred dollars (\$100) per violation.

(D) Each day of a violation constitutes a separate violation.

(E) The schedule of penalties that apply to a proprietor must be progressive, based on the number of prior violations by the proprietor.

(F) A violation that occurred more than two (2) years before a subsequent violation may not be considered in imposing a civil penalty for the subsequent violation if there has not been a finding of a violation in the intervening period.

(G) The civil penalty schedule must establish specific factors that may be considered as a basis on which to decrease or waive the amount of a penalty that would otherwise apply.

(H) Civil penalties must be doubled for intentional violations.

(3) Adopt rules under IC 4-22-2 to establish procedures for the following:

(A) Providing a proprietor or an individual written notice of a reported violation and the opportunity to present in writing any statement or evidence to contest the report.

(B) Making findings concerning whether a proprietor or

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an individual has violated this chapter.

(C) Imposing civil penalties for violations.

(4) Establish a system for receiving reports of violations of this chapter from any person, including by mail, electronic mail, and a toll free telephone number exclusively for the purpose of receiving reports. A person shall not be required to disclose the person's identity to report a violation.

(5) Inform proprietors of public places and places of employment of the requirements of this chapter and how to comply with this chapter, including by providing printed and other materials, a toll free telephone number, and electronic mail address exclusively to provide information.

(6) Design and implement a program to educate the public regarding this chapter, including the establishment of an Internet web site and information on how to report a violation.

Sec. 18. (a) The public smoking enforcement fund is established to assist the state department with enforcing this chapter. The fund shall be administered by the state department.

(b) The fund consists of grants, appropriations, and civil penalties collected under this chapter.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 19. (a) The state department or the state department's designee shall investigate a report that a proprietor of a public place or place of employment or an individual has violated this chapter.

(b) If the state department or the state department's designee investigates and finds that the proprietor or individual violated this chapter, the state department shall do the following:

(1) For the first violation, issue a warning letter to the proprietor or individual.

(2) For a second or subsequent violation, impose a civil penalty on the proprietor or individual according to the schedule adopted under section 17(b)(2) of this chapter.

(c) A proprietor or an individual against whom a finding of a violation is made under this chapter may appeal the finding in a

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1 circuit or superior court in the county where the violation allegedly  
2 took place.

3 (d) The state department may institute an action in a circuit or  
4 superior court to seek an injunction against a proprietor or an  
5 individual who repeatedly violates this chapter.

6 Sec. 20. Notwithstanding IC 16-41-39, this chapter does not  
7 prohibit a county, city, town, or other governmental unit from  
8 adopting an ordinance more restrictive than this chapter.

9 Sec. 21. (a) This chapter shall be liberally construed to  
10 accomplish the purposes of protecting public health and the health  
11 of employees.

12 (b) This chapter may not be construed to permit smoking where  
13 it is restricted by any other law or ordinance.

14 SECTION 15. THE FOLLOWING ARE REPEALED [EFFECTIVE  
15 JULY 1, 2009]: IC 16-18-2-323.1; IC 16-18-2-323.4; IC 16-41-37.

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